

(d) At the time the claimant applies for his or her annuity, no other person has a relationship under State law, as described in §§ 222.12 and 222.13, as the employee's wife, husband, or widow(er), and is entitled to an annuity under the Railroad Retirement Act or a monthly social security benefit based on that relationship.

**§ 222.15 When spouse is living with employee.**

A spouse, or widow(er) is living with the employee if—

- (a) He or she and the employee are living in the same household; or
- (b) The employee is contributing to the support of the spouse or widow(er); or
- (c) The employee is under court order to contribute to the support of the spouse or widow(er).

**§ 222.16 When spouse is living in the same household with employee.**

- (a) Living in the same household means that the employee and spouse customarily live together as a married couple in the same residence.
- (b) The employee and spouse are also considered members of the same household when they live apart but expect to resume or continue living together after a temporary separation.
- (c) If the employee and spouse were separated solely for medical reasons, the Board will consider them "living in the same household" even if the separation was likely to be permanent.

**§ 222.17 "Child in care" when child of the employee is living with the claimant.**

"Child in care" means a child who has been living with the claimant for at least 30 consecutive days unless—

- (a) The child is in active military service;
- (b) The child is 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities) or older and is not disabled;
- (c) The child is 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities) or older with a mental disability and the claim-

ant does not exercise parental control and responsibility; or

- (d) The child is 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities) or older with a physical disability, but it is not necessary for the claimant to perform personal services for the child.

(e) Parental control and responsibility for the care and welfare of the child means that the parent supervises the child's activities and makes important decisions about the child's needs either alone or with another person. Personal services are services such as dressing, feeding and managing money which the child cannot do alone because of a disability.

**§ 222.18 "Child in care" when child of the employee is not living with the claimant.**

(a) *When child is in care.* A child living apart from a claimant is in that claimant's care if—

- (1) The child lives apart or is expected to live apart from the claimant for not more than six months; or
- (2) The child is under 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities), the claimant supervises the child's activities and makes important decisions about his or her needs, and one of the following circumstances applies:

- (i) The child is living apart because of attendance at school but generally spends a vacation of at least 30 consecutive days with the claimant each year, and, if the claimant and the child's other parent are separated, the school must look to the claimant for decisions about the child's welfare.
- (ii) The child is living apart because of the claimant's employment but the claimant makes regular and substantial contributions to the child's support. "Contributing to support" is defined in § 222.42.
- (iii) The child is living apart because of the child's or the claimant's physical disability; or
- (3) The child is 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities) or older

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and is mentally disabled and the claimant supervises the child's activities, makes important decisions about the child's needs, and helps in the child's upbringing and development.

(b) *When child is not in care.* A child living apart from a claimant is not in the claimant's care if—

(1) The child is in active military service; or

(2) The child is living with his or her other parent; or

(3) A court order removed the child from the claimant's custody and control; or

(4) The claimant gave the right to custody and control of the child to someone else; or

(5) The claimant is mentally disabled.

### Subpart C—Relationship as Divorced Spouse, Surviving Divorced Spouse, or Remarried Widow(er)

#### § 222.20 When determination of relationship as divorced spouse, surviving divorced spouse, or remarried widow(er) is made.

(a) *Divorced spouse.* The claimant's relationship as the divorced spouse of an employee is determined when the purported divorced spouse applies for an annuity, or when there is a claim which would include a divorced spouse in the computation of the social security overall minimum provision. Such a determination is also made when a spouse annuitant age 62 or over secures a final divorce from the employee after 10 years of marriage.

(b) *Surviving divorced spouse.* The claimant's relationship as the surviving divorced spouse of an employee is determined when the purported surviving divorced spouse applies for an annuity on the basis of age, disability, or having a child in care. Such a determination is also made when there is a divorced spouse annuitant and the employee dies.

(c) *Remarried widow(er).* The claimant's relationship as a remarried widow(er) of an employee is determined when the purported remarried widow(er) applies for an annuity. Such a determination is also made when a widow(er) who is receiving an annuity

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remarries after age 60, or when a widow(er) who is receiving a disability annuity remarries after age 50.

#### § 222.21 When marriage is terminated by final divorce.

A final divorce, often referred to as an absolute divorce, completely dissolves the marriage relationship and restores the parties to the status of single persons. A legal separation, qualified or preliminary divorce, divorce from bed and board, interlocutory decree of divorce, or similar court order is not considered a final divorce for family relationship and benefit entitlement purposes.

#### § 222.22 Relationship as divorced spouse.

A claimant will be considered to be the divorced spouse of an employee if—

(a) His or her marriage to the employee has been terminated by a final divorce; and

(b) He or she is not married (if the claimant remarried after the divorce from the employee, the later marriage has been terminated by death, final divorce, or annulment); and

(c) He or she had been validly married to the employee, as set forth in § 222.11, for a period of 10 years immediately before the date the divorce became final. The claimant meets this requirement even if the claimant and employee were divorced within the ten-year period, provided that the claimant and employee were remarried no later than the calendar year immediately following the year in which the divorce took place.

#### § 222.23 Relationship as surviving divorced spouse.

A claimant will be considered to be the surviving divorced spouse of a deceased employee if the conditions in either paragraph (a) or (b) of this section are met:

(a) *Age or disability.* The claimant applied for an annuity on the basis of age or disability, and the conditions set forth in § 222.22 are met.

(b) *Child in care.* The claimant applied for an annuity on the basis of having a child in care, and—